

January 26, 2007

TITLE 22. EMPLOYMENT DEVELOPMENT DEPARTMENT

Adopt Sections 2708(d)-1(a), 2708(d)-1(b) and 2708(d)-1(c) of Title 22, California Code of Regulations

MEDICAL PROVIDERS – PROFESSIONAL LICENSE VERIFICATION AND TIMELINES

Notice of Proposed Rulemaking

The Employment Development Department (Department) is proposing to adopt regulations that will enhance the Department's ability to administer the State Disability Insurance (SDI) and the Paid Family Leave (PFL) programs by providing the means to guard against potential fraud and abuse of the programs. The proposed regulations will be added as California Code of Regulations (CCR), title 22, sections 2708(d)-1(a), 2708(d)-1(b), and 2708(d)-1(c).

The Department will adopt these regulations after considering all comments, objections, or recommendations regarding the proposed regulatory action.

Informative Digest/Policy Statement Overview:

Senate Bill 1661 (Chapter 901, Statutes 2002) added the Family Temporary Disability Insurance (FTDI) benefit to the California Unemployment Insurance Code (code). The FTDI benefit, otherwise known as PFL, expanded the scope of SDI to provide a wage replacement benefit so claimants can take leave to care for a seriously ill child, spouse, parent, registered domestic partner, or to bond with a new child. All SDI benefits issued by the Department are paid out of the Disability Insurance (DI) fund. Code section 2701.5 requires the Department to issue the initial benefits payment to an eligible claimant within 14 days of receipt of the claimant's first properly completed disability claim. In addition, code section 2708(d) requires that claims of an individual who obtains care and treatment outside this state must be supported by a certificate of a treating medical provider licensed or certified by the state or foreign country in which the claimant receives care and treatment before a claim can be paid.

When licensing verification cannot be obtained within 14 days of claim submission, the claim is put in "suspense." This results in deferring the eligibility determination of the

claim until license status is verified. Typically, license verification in California and other states can be obtained within three days by telephone or the states' respective web sites.

A license verification for a medical provider in a foreign country could take up to 120 days or more. Some verification requests never receive a response and claims are held in suspense indefinitely or sent notification informing the claimant that benefits have been denied. Licensing and regulatory agency processes and documentation required for a medical provider vary from one country to another. Each request for verification is researched and handled individually based on the official licensing authority rules, regulations and processes in the respective countries.

Recent changes in organizational responsibility for the medical provider license verification function and process enhancements over the past year have resulted in consistent processing of license verification requests. If a response to the verification request is not received within ninety (90) days, the disapproved request is returned to the examiner and appropriate action is taken on the claim by the examiner at that time. However, there are currently no regulations that specify:

- The term a claim for SDI benefits can be held in suspense while the license of the treating medical provider is verified;
- The types of documentation acceptable to verify the status of a license; or
- That benefits will not be paid until acceptable license verification is received.

These proposed regulations will address the above three bulleted items.

Authority and Reference:

Authority: Sections 305 and 306, Unemployment Insurance Code.

Reference: Section 2708, Unemployment Insurance Code.

Fiscal Impact:

Anticipated costs or savings in federal funding to the State: None

Anticipated costs or savings to any State Agency: None

Anticipated costs or savings to any local agency or school district: None

Significant statewide adverse economic impact: The Department does not anticipate this regulatory action will result in any costs to the federal government, to State government, to local county governments, to private individuals, or to businesses and small businesses. Thus, no costs were shown on the Economic and Fiscal Impact Statement.

The Department has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states because the license for a claim's certifying medical provider who is based in California

can be validated within two days. The Department has determined that the proposed regulations will not affect the creation or elimination of jobs within the State of California; the creation of new businesses or the elimination of existing businesses within the State of California; or the expansion of businesses currently doing business within the State of California.

The cost impact on representative persons or businesses: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulatory action.

Anticipated impact on housing costs: The proposed regulations will have no effect on housing costs.

Anticipated nondiscretionary costs or savings imposed upon local agencies: None

Small Business Impact:

The proposed regulation will have no effect on small businesses because the license for a claim's certifying medical provider who is based in California can be validated within two days.

Local Mandate Determination:

The Department has determined that these proposed regulations will not impose any new mandates on school districts or other local governmental agencies or any mandates which must be reimbursed by the State pursuant to Part 7 (commencing with section 17500), Division 4 of the Government Code.

Consideration of Alternatives:

In accordance with section 11346.5(a)(13) of the Government Code, the Department must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action.

Written Comment Period:

Any interested person, or his or her authorized representative, may submit written comments on the proposed action to Laura Colozzi via U.S. mail, e-mail, or fax (see U.S. mail and e-mail addresses and fax number indicated below). **E-mail comments should include true name and mailing address of the commentor. Written comments submitted via U.S. mail, e-mail, or fax, must be received by the Department no later than March 12, 2007, at 5 p.m.** Please submit any written comments before that time. The Department cannot accept written comments after the close of the public comment period.

Contact Persons

Inquiries or comments should be directed to:

(Mailing address) Laura Colozzi, Legal Analyst
Employment Development Department
P. O. Box 826880
Legal Office, MIC 53
Sacramento, CA 94280-0001

(Hand delivery) Laura Colozzi, Legal Analyst
Employment Development Department
800 Capitol Mall, Room 5020
Legal Office, MIC 53
Sacramento, CA 95814

Telephone No.: (916) 654-7712
Fax No.: (916) 654-9069
E-Mail Address: eddlegal@edd.ca.gov

Note: In the event Laura is unavailable, inquiries should be directed to the following backup contact persons at the same address as noted above:

Name: Penny Ayers, Legal Analyst
Telephone No.: (916) 654-8410

Questions regarding the substance of the proposed regulatory action should be directed to:

Name: Estela Gallawa, Staff Counsel
Telephone No.: (916) 654-8410

Internet Website Access

The Department has posted on its internet website <http://www.edd.ca.gov> materials regarding the proposed regulatory action. Select "Proposed EDD Regulations."

Public Hearing:

No public hearing has been scheduled on the proposed action. However, if any person desires to submit oral comments, the Department will schedule a public hearing upon that person's written request. **Such request must be received no later than 15 days prior to the close of the written comment period which is 5 p.m. on March 12, 2007.** A request for hearing can be made by contacting the persons noted above.

Modification of Proposed Action:

If the Department makes any additional changes based on public testimony, those changes (other than nonsubstantial or solely grammatical modifications) will be made available for public comment for at least 15 days before they are adopted. Copies of any additional changes regarding the proposed regulatory action will be mailed to all persons who testified or submitted written comments at the public hearing (if one is scheduled); whose comments were received by the agency during the public comment period; and who requested notification from the agency of the availability of such changes.

Final Statement of Reasons:

After the close of the 45-day public comment period, the Department will summarize and respond to all public comments in a written final statement of reasons. To obtain a copy of the final statement of reasons, contact the persons noted above, or access the Department's Internet website at <http://www.edd.ca.gov>.

Further Information:

The Department has prepared and has available for review, upon request, the text of the proposed regulations discussed in this notice, written in plain English; a statement of reasons setting forth the purpose of the proposed regulations; and the information upon which the Department relied in proposing the regulations. (If you received this notice by mail, a copy of the text of the proposed regulations and the statement of reasons were enclosed.) To obtain a copy, contact the persons noted above, or access the Department's Internet website at <http://www.edd.ca.gov>.

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public review. For inquiries regarding the rulemaking file or the regulations' process, contact the persons noted above.
